

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROCCO ZECCA,)	
)	
Petitioner,)	
)	
v.)	Civ. A. No. 02-1453
)	
RAPHAEL WILLIAMS, Warden,)	
)	
Respondent.)	
)	
)	

Rocco John Zecca, Wilmington, Delaware. Pro se.

Thomas E. Brown, Esquire, Deputy Attorney General, Delaware
Department of Justice, Wilmington, Delaware. Counsel for
respondent.

MEMORANDUM OPINION

Dated: April 11, 2003
Wilmington, Delaware

ROBINSON, District Judge

I. INTRODUCTION

Currently before the court is petitioner Rocco John Zecca's application for habeas corpus relief filed pursuant to 28 U.S.C. § 2254. Petitioner was indicted in November 1997 in the Delaware Superior Court for trafficking in cocaine, possession with intent to deliver cocaine, maintaining a vehicle for keeping controlled substances, and second degree conspiracy. In December 1998, petitioner pled guilty to trafficking in cocaine, and the state entered a nolle prosequi with respect to the remaining charges. The Superior Court sentenced petitioner to three years imprisonment, which it suspended upon petitioner's completion of a "boot camp" diversion program, and to two and one-half years of probation. The Superior Court also ordered petitioner held at "Level V" pending placement in the boot camp diversion program.

Petitioner spent almost one year incarcerated at a Level V facility awaiting placement in a boot camp diversion program. He spent an additional 6 months in a boot camp program and completed the program on May 15, 1999. At that time, petitioner entered probation.

On September 11, 2001, defendant was found to be in violation of his probation. The Superior Court revoked his probation and reimposed the 3 year sentence, with credit for 1 year previously served.

In his application for habeas corpus relief, petitioner raises four claims. Because none of these claims challenges the constitutionality of his underlying conviction and sentence, the court shall deny his application.

II. DISCUSSION

The essence of petitioner's habeas corpus application is that he should be granted credit for the time spent completing the boot camp program. The Delaware Supreme Court has reviewed petitioner's claim and determined that

Zecca's claim that he is entitled to an additional 6 months credit for the time he spent at boot camp is without merit. Pursuant to the boot camp diversion program statute, the Superior Court is mandated to reimpose the defendant's entire deferred sentence upon a finding of a [violation of probation]. Moreover, the statute clearly states that '[n]o time shall be given for any time spent in boot camp, Level IV or Level III[.]'

Zecca v. State, No. 140,2002 (Del. Aug. 9, 2002) (internal citation omitted).

Zecca's petition does not state grounds for habeas corpus relief. To seek relief under the federal habeas corpus statute, a prisoner must allege that he is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2254(a). Petitioner does not challenge the constitutionality of his sentence. Instead, petitioner's application for habeas corpus relief rests primarily on his contention that he should be granted credit for time spent in the boot camp program.

Moreover, under the plain language of 11 Del. C. § 6712(h), petitioner is not entitled to credit for any time spent in the boot camp program. See 11 Del. C. § 6712(h) ("If the offender had already been sentenced and the sentence was modified pursuant to this section, the offender shall serve the remainder of that original sentence. **No credit time shall be given for any time spent in boot camp,** Level IV or Level III.") (emphasis added). Accordingly, petitioner's habeas corpus application fails to allege a constitutional violation and, as such, does not state a claim for relief under 28 U.S.C. § 2254.

Petitioner also asserts that his guilty plea was involuntary because he did not know he would not be credited for the time spent in the boot camp program. This issue was not raised with the Delaware Supreme Court. This court can only consider petitioner's grounds for relief if he can demonstrate cause for his failure to raise them to the Delaware Supreme Court and actual prejudice or "that failure to consider the claims will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 750 (1991). To show cause, the petitioner must demonstrate that "something external to the petitioner, something that cannot fairly be attributed to him" impeded his efforts to comply with the State's procedural rules. Id. at 753. Such factors include interference by government officials, constitutionally ineffective assistance of counsel, or

the unavailability of the factual or legal basis for a claim.

See, e.g., McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Petitioner's application is devoid of any showing of cause for his failure to raise his claims to the Delaware Supreme Court. Because petitioner has not established cause, the court need not inquire as to whether petitioner suffered prejudice.

See Bailey v. Snyder, 855 F. Supp. 1392, 1402 (D. Del. 1993), aff'd, 68 F.3d 736 (3d Cir. 1995).

Alternatively, the court can consider otherwise procedurally barred claims if petitioner demonstrates that failure to do so would constitute a "miscarriage of justice." See Schlup v. Delo, 513 U.S. 298, 314-15 (1995). This exception applies only in "extraordinary cases." Id. at 321. Petitioner's case does not fall within this exception.

III. CONCLUSION

For the aforementioned reasons, the court shall deny petitioner's application for federal habeas corpus relief. An appropriate order shall issue.

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O R D E R

At Wilmington, this 11th day of April, 2003, consistent with the memorandum opinion issued this same day,

IT IS ORDERED that:

1. Petitioner Rocco John Zecca's above captioned application for habeas corpus relief filed pursuant to 28 U.S.C. § 2254 is dismissed and the writ denied.

2. For the reasons stated above, petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and a certificate of appealability is not warranted. See United States v. Eyer, 113 F.3d 470 (3d Cir. 1997); 3d Cir. Local Appellate Rule 22.2 (1998).

Sue L. Robinson
United States District Judge